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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 896.

FAITOUTE IRON & STEEL COMPANY, THE HOWARD SAVINGS INSTITUTION, FLORENCE W. FAITOUTE, *et als.*,

Appellants,

vs.

CITY OF ASBURY PARK, a Municipal Corporation of the State of New Jersey,

Appellee.

On Appeal from the Court of Errors and Appeals of New Jersey.

SUPPLEMENT FILED BY APPELLANTS.

ARTHUR T. VANDERBILT,
Attorney of Appellants.

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ON APPEAL FROM THE COURT OF ERRORS AND APPEALS OF NEW JERSEY.

SUPPLEMENT FILED BY APPELLANTS.

Pursuant to the instructions given by the Court at the conclusion of the argument yesterday, appellants submit herewith the New Jersey statutes which give consent to municipalities of New Jersey to avail themselves of the provisions of the Federal Municipal Bankruptcy Acts. A brief statement concerning the history of these statutes will, it is thought, aid the Court in understanding the manner in which they are set forth herein.

After the First Municipal Bankruptcy Act (subsequently held invalid by this Court in *Ashton* v. *Cameron County Water Improvement District No. One*, 298 U. S.

513) was enacted by the Congress in 1934, the legislature of New Jersey in 1935 passed three acts authorizing municipalities of New Jersey to avail themselves of the provisions of the Federal Act. These three Acts, Chapters 190, 193 and 313 of the Laws of 1935, are set forth herein and designated as follows:

Appendix A, Chapter 190, Laws of 1935
Appendix B, Chapter 193, Laws of 1935
Appendix C, Chapter 313, Laws of 1935.

In 1937, there was a general revision of all of the laws of New Jersey and the three 1935 acts above referred to were consolidated in the Revised Statutes as R. S. 52:27-40 to 45, inclusive. This consolidation is set forth herein as Appendix D.

After the Second Municipal Bankruptcy Act was enacted by the Congress in 1937 and sustained by this Court in *United States* v. *Bekins*, 304 U. S. 27, the legislature of New Jersey in 1938 amended the provisions of R. S. 57:27-40, 42 and 44 to permit municipalities of New Jersey to avail themselves of the new Bankruptcy Act and of any amendments or supplements thereto. The amendment of 1938 is set forth herein as Appendix E.

It will be noted upon examination of these statutes that the State of New Jersey has given to all municipalities generally the right to avail themselves of the Bankruptcy Act subject to the approval of the Municipal Finance Commission. The necessity of obtaining the approval of the Municipal Finance Commission does not, it is submitted, destroy the consent given, nor does it make the Act anything other than general in its scope.

These statutes clearly sustain the statements at the argument that New Jersey has given consent to municipalities to

avail themselves of the Federal Act. Clearly since May 1938, when the 1938 amendment became effective, any municipality of New Jersey with the consent of the Municipal Finance Commission could and can avail itself of the Federal Act held constitutional by this Court in April 1938 in the *Bekins* case.

Appellants would like to point out, however, that in their view of the case the New Jersey composition statute, challenged by this appeal, is unconstitutional as applied to appellants, irrespective of the question of whether New Jersey has given consent to municipalities to avail themselves of the Federal statute.

It is clear from the cases cited in appellants' main brief that no state has the power directly or under the guise of a composition or bankruptcy act to abridge a pre-existing contractual obligation. Since the Constitution denies to every state this power, no state can acquire the power by merely refusing to give its consent to municipalities to avail themselves of a valid Federal law. As stated by Chief Justice Hughes in the *Bekins* case, "It lies in the right of the state to oppose Federal interference", but when the state gives its consent Chief Justice Hughes very aptly said that in that case "The state steps in to remove that obstacle. The state acts in aid and not in derogation of its sovereign powers. It invites the interference of the bankruptcy powers to save its agency which the state itself is powerless to rescue".

If this were not so, there would have been no occasion for the Congress to enact the Second Municipal Bankruptcy Act after the first act was held unconstitutional. Certainly if this were not so, there would have been no occasion for the states to urge the adoption of the second act and through their respective attorneys general to argue

in favor of its constitutionality before this Court. It is clear, therefore, that a state may prevent all municipal bankruptcies by refusing to give permission to municipalities to avail themselves of the Federal Act, but they cannot by such refusal create in themselves the power to enact bankruptcy laws applicable to pre-existing obligations.

These New Jersey statutes, while they cannot affect the constitutionality of the composition statute here challenged, do show that any municipality of New Jersey, including appellee, could proceed with the consent of the Municipal Finance Commission under the Federal Act.

In conclusion, it is submitted that, entirely aside from any question of Federal legislation concerning municipal bankruptcies and a state consenting or not consenting thereto, no state has the power to enact bankruptcy or composition statutes abridging pre-existing obligations such as those involved in the present controversy. The unbroken line of authorities construing the contract clause of the Federal Constitution, referred to in appellants' main brief, pages 16-29, commencing with *Sturges* v. *Crowinshield*, 4 Wheat. 122 (1819) down to *United States* v. *Bekins*, 304 U. S. 27 (1938), so holds. The appellee cites no cases in his brief and at the oral argument could refer the Court to no cases where a state bankruptcy or composition statute abridging pre-existing contracts has been sustained by this Court or by the Courts of New Jersey except the present case.

Respectfully submitted,

ARTHUR T. VANDERBILT,
Attorney of Appellants.

Appendix A.

CHAPTER 190

AN ACT to supplement an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred and thirty-one, as amended.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever, pursuant to the act to which this act is a supplement, the Municipal Finance Commission, hereinafter sometimes referred to as the "commission" shall function in any municipality, any such municipality may file a petition with any United States court of bankruptcy under an act of the Congress of the United States entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplemental thereto," approved May twenty-fourth, one thousand nine hundred and thirty-four, for the purpose of effecting a readjustment of its debts. No such petition nor any plan of readjustment in connection therewith shall be filed with the court by any municipality, however, unless the same shall be accompanied by the written approval of the commission, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of the commission of such plan. The municipality shall give the commission at least ten days notice in writing of all hearings and other proceedings before the court of bankruptcy or any special master in connection with any such petition or plan of readjustment.

2. The commission shall have power in its discretion to give its written approval of any petition proposed to be filed

by any municipality hereunder and of any plan of readjustment of its debt filed with or in proceedings upon such petition; *provided, however,* that notwithstanding any provision of this act, the commission shall not approve any plan of readjustment which provides for the reduction in the principal amount of any outstanding notes or bonds of such municipality.

3. This act shall take effect immediately.

Approved May 15, 1935.

Appendix B.

CHAPTER 193

AN ACT concerning the financial difficulties of counties, municipalities, school districts, or other political subdivisions of this State.

WHEREAS, By an act of the Congress of the United States entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplementary thereto," approved May twenty-fourth, one thousand nine hundred and thirty-four, the Congress of the United States has undertaken the further exercise of the bankruptcy powers because of the national emergency caused by increased financial difficulties of many local governmental units; and

WHEREAS, Pursuant to said act of the Congress of the United States divers counties, municipalities, school districts or other political subdivisions of this State may desire to effect a readjustment of their debts and to procure the discharge of debts and liabilities provided for in said act; and

WHEREAS, Public and recorded confession that it is insolvent or unable to meet its debts as they mature must be made by any county, municipality, school district or other political subdivision desiring to take action under said act of the Congress of the United States; and

WHEREAS, Said act of the Congress of the United States reserves to the State the power to control the actions of its counties, municipalities, school districts or other political subdivisions under said act; now, therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Any county, municipality, school district or other political subdivision of this State (hereinafter referred to

as "political subdivision") shall have power to file a petition or petitions with any United States court or court in bankruptcy under an act of the congress of the United States entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplementary thereto," approved May twenty-fourth, one thousand nine hundred and thirty-four (hereinafter referred to as the "municipal bankruptcy act"), for the purpose of effecting a readjustment of its debt. Such petition or petitions shall not be so filed unless the approval of the municipal finance commission constituted by section one hundred two of an act of the Legislature of the State of New Jersey entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred and thirty-one, as amended and supplemented, which is hereby constituted a commission for the purposes of this act, be first had and obtained.

2. The filing of such petition shall be authorized only by ordinance of the governing body of the political subdivision adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body, except that in the case of a county or of a school district governed by the provisions of article VII of an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October nineteenth, one thousand nine hundred and three, as amended and supplemented, such filing shall be authorized by resolution of the governing body adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body. For the purposes of this act the board of education of a school district governed by the provisions of article VII of an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and

management thereof," approved October nineteenth, one thousand nine hundred and three, as amended and supplemented, shall be deemed to be the "governing body" of such school district.

3. No plan of readjustment filed with or in the proceedings upon any such petition shall be approved by the court or put into temporary effect or finally confirmed without the approval of the municipal finance commission.

4. The municipal finance commission shall have power in its discretion to give its approval in the manner provided by this act to the filing of any petition for the purpose of effecting readjustment of its debt which any political subdivision proposes to file, and of any plan of readjustment filed with or in the proceedings upon any such petition; *provided, however,* that no such plan of readjustment shall provide for the reduction of the principal amount of any outstanding notes or bonds of the political subdivision or for the payment of fees, compensation, reimbursement or other allowances for attorneys, agents, committees, or other representatives of creditors of the political subdivision.

5. Upon the final confirmation of any plan of readjustment approved by the municipal finance commission, the political subdivision assenting to such plan of readjustment shall have power, by ordinance in the case of a municipality, by resolution in the case of a county, and by resolution of the board of education in the case of a school district governed by the provisions of article VII of an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October nineteenth, one thousand nine hundred and three, as amended and supplemented to authorize, issue, sell and deliver such bonds, notes or other obligations and enter into such agreements and do such other acts and things as may be required of it pursuant to said plan of readjustment. The full faith and credit of the political subdivision shall be deemed to be pledged for the payment of such notes, bonds or other obligations. Such ordinance or resolution, as the case may

be, shall not take effect until approval by the municipal finance commission, and shall provide for the issuance of bonds in one or more series, bearing such date or dates, maturing at such time or times, bearing interest at such rate or rates of interest, not exceeding six per centum (6%) per annum, payable at such time or times, in such denominations, in such form, either coupon or registered, carrying such registration privileges, payable in such medium of payment at such place or places, subject to such terms of redemption, with or without premium, as the municipal finance commission may approve.

6. The approval of any petition, plan of readjustment or other papers to be filed in any United States court or court in bankruptcy, or of any ordinance or resolution shall be requested by filing in the office of the municipal finance commission a certified copy of a resolution of the governing body of the political subdivision adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body, requesting such approval, together with a true and correct transcript duly certified of any proceedings relating to such petition, plan of readjustment, other papers, ordinance or resolution, and the authorization thereof, accompanied by, in the case of documents to be filed in the United States court or court in bankruptcy, the original and one certified copy of such documents, and in the case of an ordinance or resolution, two certified copies of such ordinance or resolution. The approval of the municipal finance commission under this act of any petition, plan of readjustment or other papers filed or to be filed in a United States court or court in bankruptcy, shall be evidenced only by written endorsement thereof on the petition, plan of readjustment or other papers so filed and the approval of the municipal finance commission under this act of any ordinance or resolution of the governing body of any political subdivision shall be evidenced only by written endorsement thereof on a certified copy of such ordinance or resolution.

7. This act shall take effect immediately.

Approved May 15, 1935.

Appendix C.

CHAPTER 313

AN ACT to amend an act entitled "An act concerning the financial difficulties of counties, municipalities, school districts, or other political subdivisions of this State," approved May fifteenth, one thousand nine hundred thirty-five, constituting chapter one hundred ninety-three of the laws of one thousand nine hundred thirty-five.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section four of the act to which this act is an amendment be and it hereby is amended to read as follows:

4. The municipal finance commission shall have power in its discretion to give its approval in the manner provided by this act to the filing of any petition for the purpose of effecting readjustment of its debt which any political subdivision proposes to file, and of any plan of readjustment filed with or in the proceedings upon any such petition; *provided, however,* that no such plan of readjustment shall provide for the reduction of the principal amount of any outstanding notes or bonds of the political subdivision nor, without the express approval in writing of the municipal finance commission, for the payment of fees, compensation, reimbursement or other allowances for attorneys, agents, committees, or other representatives of creditors of the political subdivision.

2. This act shall take effect immediately.

Approved June 29, 1935.

Appendix D.

Article 8. Readjustment of Debts Under Federal Municipal Bankruptcy Act.

52:27–40. Filing of petition by political subdivision; approval of commission. Any county, municipality, school district or other political subdivision of this state, hereinafter in this article referred to as "political subdivision", shall have power to file a petition or petitions with any United States court or court in bankruptcy under an act of the congress of the United States entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplementary thereto," approved May twenty-fourth, one thousand nine hundred and thirty-four, hereinafter in this article referred to as the "municipal bankruptcy act", for the purpose of effecting a readjustment of its debt. Such petition or petitions shall not be so filed unless the approval of the municipal finance commission, which is hereby constituted a commission for the purposes of this article, be first had and obtained.

Sources. L. 1935, c. 190, §1, p. 464, suppl. to L. 1931, c. 340, p. 830. L. 1935, c. 193, §1, p. 467.

52:27–41. Ordinance or resolution of governing body to authorize filing of petition. The filing of such petition shall be authorized only by ordinance of the governing body of the political subdivision adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body, except that in the case of a county or of a school district governed by the provisions of chapter 7 of the title Education (§18:7–1 *et seq.*), such filing shall be authorized by resolution of the governing body adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body. For the purposes of this article the board of education of a school district governed by the provisions of said chapter 7 shall be deemed to be the "governing body" of such school district.

Source. L. 1935, c. 193, §2, p. 469.

52:27-42. Approval by commission of readjustment plan necessary. No plan of readjustment filed with or in the proceedings upon any such petition shall be approved by the court or put into temporary effect or finally confirmed without the approval of the commission.

Source, L. 1935, c. 193, §3, p. 469.

52:27-43. Commission authorized to approve petition and plan; restrictions. The commission may in its discretion give its approval in the manner provided by this article to the filing of any petition for the purpose of effecting readjustment of its debt which any political subdivision proposes to file, and of any plan of readjustment filed with or in the proceedings upon any such petition; but no such plan of readjustment shall provide for the reduction of the principal amount of any outstanding notes or bonds of the political subdivision nor, without the express approval in writing of the commission, for the payment of fees, compensation, reimbursement or other allowances for attorneys, agents, committees, or other representatives of creditors of the political subdivision.

Sources. L. 1935, c. 190, §2, p. 465, suppl. to L. 1931, c. 340, p. 830. L. 1935, c. 193, §4, p. 470, as am. by L. 1935, c. 313, §1, p. 1002.

52:27-44. Powers of political subdivision upon confirmation of readjustment plan; issuance of bonds or notes. Upon the final confirmation of any plan of readjustment approved by the commission, the political subdivision assenting to such plan of readjustment may, by ordinance in the case of a municipality, by resolution in the case of a county, and by resolution of the board of education in the case of a school district governed by the provisions of chapter 7 of the title Education (§18:7-1 *et seq.*), authorize, issue, sell and deliver such bonds, notes or other obligations and enter into such agreements and do such other acts and things as may be required of it pursuant to said plan of readjustment. The full faith and credit of the political subdivision shall be deemed to be pledged for the payment of such notes, bonds or other obligations. Such ordinance or resolution, as the case may be, shall not take effect until

approved by the commission, and shall provide for the issuance of bonds in one or more series, bearing such date or dates, maturing at such time or times, bearing interest at such rate or rates of interest, not exceeding six per cent per annum, payable at such time or times, in such denominations, in such form, either coupon or registered, carrying such registration privileges, payable in such medium of payment at such place or places, subject to such terms of redemption, with or without premium, as the commission may approve.

Source. L. 1935, c. 193, §5, p. 470.

52:27-45. Request for approval of petition, plan, etc.; procedure. The approval of any petition, plan of readjustment or other papers to be filed in any United States court or court in bankruptcy, or of any ordinance or resolution shall be requested by filing in the office of the commission a certified copy of a resolution of the governing body of the political subdivision adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body, requesting such approval, together with a true and correct transcript duly certified of any proceedings relating to such petition, plan of readjustment, other papers, ordinance or resolution, and the authorization thereof, accompanied by, in the case of documents to be filed in the United States court or court in bankruptcy, the original and one certified copy of such documents, and in the case of an ordinance or resolution, two certified copies of such ordinance or resolution. The approval of the commission under this article of any petition, plan of readjustment or other papers filed or to be filed in a United States court or court in bankruptcy, shall be evidenced only by written indorsement thereof on the petition, plan of readjustment or other papers so filed and the approval of the commission under this article of any ordinance or resolution of the governing body of any political subdivision shall be evidenced only by written indorsement thereof on a certified copy of such ordinance or resolution.

Source. L. 1935, c. 193, §6, p. 471.

Appendix E.

CHAPTER 243

AN ACT to amend sections 52:27–40, 52:27–42 and 52:27–44 of the Revised Statutes in relation to the readjustment of the debts of municipal and other political subdivisions of this State under the Federal bankruptcy act.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 52:27–40 of the Revised Statutes is hereby amended to read as follows:

52:27–40. Any county, municipality, school district or other political subdivision of this State, hereinafter in this article referred to as "political subdivision," shall have power to file a petition or petitions with any United States court or court in bankruptcy under an act of the Congress of the United States entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplementary thereto, as the same may be amended from time to time, hereinafter in this article referred to as the "municipal bankruptcy act," for the purpose of effecting a plan of readjustment of its debts or for the composition of its debts, which adjustment and composition are hereinafter interchangeably referred to as readjustment. Such petition or petitions shall not be so filed unless the approval of the municipal finance commission, which is hereby constituted a commission for the purposes of this article, be first had and obtained.

2. Section 52:27–42 of the Revised Statutes is hereby amended to read as follows:

52:27–42. No plan of readjustment filed with or in the proceedings upon any such petition shall be approved by the court or put into temporary effect or finally confirmed

without the approval of the commission. No political subdivision shall so file any such plan which shall not have been approved by the commission nor shall any political subdivision accept any such plan as thereafter changed or modified without express authority from the commission to do so.

3. Section 52:27–44 of the Revised Statutes is hereby amended to read as follows:

52:27–44. Upon the confirmation of any plan of readjustment approved by the commission, the political subdivision assenting to such plan of readjustment may, by ordinance in the case of a municipality, by resolution in the case of a county, and by resolution of the board of education in the case of a school district governed by the provisions of chapter seven of the Title Education (§18:7–1 et seq.), authorize, issue, sell and deliver such bonds, notes or other obligations and enter into such agreements and do such other acts and things as may be required of it pursuant to said plan of readjustment. The full faith and credit of the political subdivision shall be deemed to be pledged for the payment of such notes, bonds or other obligations. Such ordinance or resolution, as the case may be, shall not take effect until approved by the commission, and shall provide for the issuance of bonds in one or more series, bearing such date or dates, maturing at such time or times, bearing interest at such rate or rates of interest, not exceeding six per centum per annum, payable at such time or times, in such denominations, in such form, either coupon or registered, carrying such registration privileges, payable in such medium of payment at such place or places, subject to such terms of redemption, with or without premium, as the commission may approve. The foregoing powers shall be deemed to be in addition to and not in substitution for any powers which such political subdivision would, except for the foregoing grant thereof, have under any other provision of law.

4. This act shall take effect immediately.

Approved May 25, 1938.